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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2526 of 1992

For Approval and Signature:
HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

S B PATEL

Versus

O RAVI OR HIS SUCCESSOR

Appearance:
1. Special Civil Application No. 2526 of 1992
MRS KETTY A MEHTA for Petitioner No. 1
MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Resp.
NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI
Date of decision: 12/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the order dated 21.12.1990, passed by the Collector, Valsad, by which a penalty of with-holding of 5 increments of the petitioner without future effect was imposed upon the petitioner, as also the order dated 30th September, 1991, passed by the Gujarat Civil Services Tribunal, while deciding Appeal No. 30 of 1991 filed by the petitioner, by which the penalty of withholding of 5 increments was substituted by the penalty of stoppage of 4 annual increments without future effect.

2. The petitioner while working as a Mamlatdar in the Dungri office under the Collector, Valsad, was served with a charge-sheet dated 13.9.1990, mainly alleging certain irregularities alleged to have been committed by the petitioner while certifying a particular entry in the

record of rights with respect to an entry No. 3548 pertaining to land admeasuring 87 Are 98 square meters of block No. 137 paiki of village Kalwada, Tal. Valsad.

3. In response to the said charge-sheet dated 13.9.1990, the petitioner gave his statement of defence to the Collector, Valsad, by his representation dated 8.9.1990, and denied the allegations made against him. The Collector, Valsad, after considering the representation of the petitioner and the gravity of charges levelled against him, by his order dated 21.12.1990, imposed a penalty of with-holding of 5 increments of the petitioner without future effect. As mentioned earlier, the petitioner appealed against the said order before the Gujarat Civil Services Tribunal and in the said appeal, the Tribunal by its order dated 30th September, 1991, though agreeing with the findings of the Collector, ordered that the penalty imposed on the petitioner by the Collector shall be substituted by the penalty of withholding of 4 increments without future effect. Aggrieved by the said order of penalty imposed upon the petitioner, the petitioner has filed the present petition challenging the same.

4. Learned Counsel Ms. K.A. Mehta has extensively read the charge-sheet issued to the petitioner, the explanation of the petitioner to each charge contained therein and the conclusions of the Collector while passing the order of penalty. She has also pointed out relevant portions of the order of the Gujarat Civil Services Tribunal.

5. It may be noted at the outset that no allegations have been made with respect to the conduct of the enquiry and no ground is urged to suggest that any of the procedural requirements was not followed while holding the enquiry. In short, the petitioner has not complained about the enquiry being defective, but has concentrated on pointing out that the Disciplinary Authority erred in coming to the conclusion that the charges are proved.

6. In support of the challenge to the penalty imposed upon the petitioner, the learned Counsel for the petitioner has raised several contentions. It is contended that the petitioner was functioning as a quasi-judicial authority and in discharge of such powers, the enquiry could not have been conducted for mere negligence or error of judgement and unless there is a charge of misappropriation established against the petitioner, the enquiry could not have been held. In support of this contention, learned Counsel for the

petitioner has relied on the decision of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar Vs. Union of India and ors. reported in (1999) 7 SCC 409.

7. Learned Counsel for the petitioner has submitted that the entry in question was challenged by the aggrieved persons i.e. the original land owners before the Deputy Collector and the Deputy Collector had, by an order dated 25.3.1991, rejected the appeal. She has submitted that this fact was brought to the notice of the Tribunal, which has completely ignored this aspect of the matter. She submits that though this order was not available when the Disciplinary Authority passed the order of penalty, the Tribunal ought to have taken in to consideration and ought to have held that the steps taken by the petitioner have been found sufficient and the entry has been upheld by the Appellate Authority.

8. The learned Counsel has further submitted that the entry in question was certified by the petitioner with due care and caution, and that all legal requirements were followed. She draws my attention to the provisions of Section 135-D of the Bombay Land Revenue Code and contents that the duties and responsibilities of the Mamlatdar while certifying an entry in the record of rights are limited and the petitioner has taken due care and caution to follow the procedure and therefore, no enquiry could have been conducted.

9. It is submitted on behalf of the petitioner that entire issue arose on a complaint made by the land owners who raised the said issue at a belated stage of nearly 2 years after the entries were certified. It is pointed out that the transaction in question had been taken place through a Power of Attorney and that there was no dispute about the genuineness of the Power of Attorney. It was only to take advantage of the rise in price of the land that the land owners raised the issue of certification of the entries and such a complaint could not have been formed the basis for initiating enquiry against the petitioner.

10. Appearing for the respondents, learned Assistant Government Pleader Mr. Gohil has submitted that the Collector while passing the impugned order of penalty has taken into account all aspects of the matter and has held that the petitioner was guilty of misconduct and the penalty imposed is therefore just and proper. He submits that simply because the petitioner was discharging quasi-judicial functions, does not mean that the

petitioner is immune from Departmental action if it is found that the petitioner has misconducted himself. Relying on the order of the Collector, he submits that the petitioner has shown undue haste and had shown favour to the Power of Attorney holder and had certified the entries without following proper procedure. He has produced on record an order dated 4.5.1992 passed by the Appellate Authority, in the Appeal filed against order of the Deputy Collector dated 25.3.1991, which is allowed and the entries have been set aside.

11. Having considered the rival submissions, as noted above the Appellate Authority having set aside the order of the Deputy Collector regarding the entries in question, it is necessary to examine whether the Disciplinary Authority had correctly come to the conclusion that the petitioner has misconducted himself while certifying the entries in question.

12. With respect to charge No.1, it can be seen that it is alleged against the petitioner that the land in question of village Kalwada, Tal. Valsad was in the name of Shri Himatbhai Jaganbhai and others; that the land owners had given power of attorney dated 19.5.1983 and 31.5.1983 in favour of Shri Thakorbhai Somabhai Ahir and on the basis of this power of attorney, Thakorebhai Somabhai Ahir sold the land in question on 31.8.1988 to his son Babubhai Thakorebhai Ahir. A mutation entry No. 3548 in village Form No.6 was therefore, entered on 2.9.1988. It is alleged that immediately upon completion of the statutory period, the entry was certified by the petitioner on 5.10.1988. It is alleged that while so certifying there is an endorsement that the notices as required under Section 135-D of the Bombay Land Revenue Code have been served, but these notices are served only to the power of attorney holder of Shri Thakorebhai Somabhai Ahir and the purchaser of the land i.e. his son Babubhai Thakorebhai Ahir and it is stated that the notices were not served on the original land owners and the occupiers of the land.

In response to this charge, the petitioner has pointed out in his defence statement that he had relied upon the Power of Attorney which gave full authority to the holder of the power to act on behalf of the land owners and that therefore, there was no necessity to issue separate notices to the land owners under Section 135-D of the Bombay Land Revenue Code.

The Collector in his order of punishment dated 21.12.1990, found that when the power of attorney holder

was executing a sale deed in favour of his own son, the petitioner should have taken extra care and before certifying the entry, he should have ensured that the notices are served to the land owners and occupiers. Not having done this, the Collector found that the petitioner had shown gross negligence.

13. Under Section 135 of the Bombay Land Revenue Code, the village Accountant has to enter into Register of Mutations, every report made to him under Section 135-C or any intimation of acquisition or transfer of any right. It is further provided that whenever Accountant makes such an entry in the register of mutation, he shall at the same time, paste a complete copy of the entry in a conspicuous place in the chavdi and shall give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation and to any other person to whom he has reason to believe to be interested therein. Sub-section (6) of Section 135-D provides that entries in the Register of Mutation shall be tested, and if found correct or after correction as the case may be, shall be certified by a Revenue Officer of the rank not lower than that of a Mamlatdar's first Clerk. Thus, it was the duty of the petitioner to test the entries made by the Accountant who inturn was required to take all necessary care to give written intimation to all persons appearing from the record of rights or register of mutations to be interested in the mutation, and to any other person whom he has reason to believe to be interested therein. Seen in this light, the observation of the Collector while passing the impugned order that when the power of attorney holder was executing a sale deed in favour of his own son, further care should have been taken to issue notices to the land owners and occupiers, cannot be found fault with. In my view therefore, the Disciplinary Authority correctly found that article charge No.1 is proved against the petitioner.

14. The second charge levelled against the petitioner was to the effect that the petitioner acted on the power of attorney without properly verifying the genuineness of this document.

In his defence the petitioner has stated that he had called for the original power of attorney and acted on it only after verification.

In the impugned order the Collector records that when the sale deed was being executed in favour of his own son by the power of attorney holder, the petitioner

committed a serious error in relying upon the power of attorney without any verification. I find that there is a great deal of variation in the charges levelled against the petitioner and the conclusions of the Collector in the impugned order. In any case, the petitioner had pointed out that he had relied upon not the xerox of the power of attorney, but on the original and this aspect has not been denied by the Disciplinary Authority. I therefore find that the Collector erred in holding charge No.2 proved against the petitioner.

15. With reference to article charge No.3, it is alleged against the petitioner that the mutation entry No. 3548 was made on 2.9.1988 and the petitioner certified the entries on 5.10.1988 without verifying as to on which date the notices were served on the parties. Thus, he certified the entries without verifying whether the statutory period was over or not.

With respect to this charge, the petitioner had contended that the entries were made on 2.9.1988 and therefore, the statutory period was over on 2.10.1988 and therefore his action of certifying the entry on 5.10.1988 was after the period of limitation was over and no objection regarding the same can be taken.

The Collector while considering the charge against the petitioner and his defence, found that the entry in question was made on 2.9.1988 in village Form No. 6. The petitioner has not tried to find out on which date the notices were served and whether they were served to the owners or not and thus, before the statutory period was over, he has certified the entries. He thus, found that article charge No.3 was proved against the petitioner.

As observed above, the charge against the petitioner in this regard was that the entries which were made on 2.9.1988 were certified by him on 5.10.1988. It was alleged that he did not find out as to when was the notices were served so as to permit him to certify the entries 30 days after the service of the notice. The petitioner in his reply has not thrown any light on this aspect also. He has not stated that the notices were served on or before 5.9.1988 permitting him to certify the entries on 5.10.1988. His reply on this aspect is vague and the explanation tendered by him was correctly not accepted by the Collector. I therefore find that the Collector was perfectly justified in concluding that charge No.3 was proved against the petitioner.

16. The fourth charge against the petitioner was that the extract from the Sub-Registrar's office regarding the sale-deed in question was sent to the Mamlatdar only on 26.9.1988, which extract was forwarded by the petitioner to the Talati-cum-Mantri, Kalwada on 15.10.1988 by his outward No.66, whereas the mutation entry No. 3548 was made on 2.9.1988 and was certified on 5.10.1988 by the petitioner, whereas the Talati-cum-Mantri received the extracts of the Register only on 15.10.1988. In his defence the petitioner has suggested that the Talati received the extracts on 2.9.1988 and it must have been on this basis that the Talati carried out the change in the mutation register on 2.9.1988 and he therefore, correctly acted by certifying the change on 5.10.1988.

17. The Collector in his impugned order observed that the extract of the records with the Registrar's office was sent only on 26.9.1988, which was forwarded by the petitioner to the Talati-cum-Mantri on 15.10.1988 and thus, the same was lying with the petitioner till 15.10.1988 and therefore his action of certifying entry on 5.10.1988 was not justified and raises grave doubt.

18. I find that the petitioner has not been able to raise any dispute about the movement of the extract of the Sub-Registrar office which is born out from the record. The petitioner has not even suggested that the entry was not sent by outward register on 15.10.1988. In fact, the Collector in his order appears to have come to the conclusion that though the date of 2.9.1988 was put on the record to suggest that the said document was forwarded to the Talati-cum-Mantri on 2.9.1988, in fact it was lying with the Mamlatdar till 15.10.1988. Thus, the allegation against the petitioner stands proved and the Collector was justified in coming to the conclusion that the charge article 4 is proved against the petitioner.

19. With respect to the 5th charge, it was alleged against the petitioner that though there were two tenants on the land in question, he certified the entries ignoring this aspect.

The petitioner in his defence pointed out that entry Nos. 3130 and 3136 by which the presence of the tenants were recorded, came to be deleted later on upon appeal, and he had therefore acted as per the record as it stood at the relevant time.

The Collector in his impugned order observed that though the entries were ordered to be deleted, the

petitioner should have taken care to enquire whether there have been any further proceedings or not. This was never part of the charge against the petitioner and that therefore, I find that the Collector has committed an error in stretching the charge levelled against the petitioner to hold that the same is proved.

20. Having examined the charge-sheet, the defence of the petitioner and the final conclusions of the Collector as discussed earlier, I come to the conclusion that the Collector was justified in holding that charges article 1, 3 and 4 are correctly proved. With respect to charges article 2 and 5, there was no material to establish the charges. In view of the fact that the penalty imposed on the petitioner which ultimately stands today is that of withholding of 4 increments without future effect, it is not possible for me to come to the conclusion that the penalty shocks the conscience of the Court even considering only 3 out of above 5 charges are correctly held to have been proved. The petitioner who was entrusted with the duty to examine the correctness of the entry made by the Talati-cum-Mantri had acted grossly in a negligent manner and had shown undue haste in certifying the entries. As noted earlier the entries were made on 2.9.1988 and certified on 5.10.1988 without verifying whether statutory period of 30 days after service of notice was over or not and without verifying whether the Talati had taken due care to issue notices to all interested persons and also had certified the entry which Talati had made on the basis, besides other things, the extracts of the Sub-Registrar which the Talati never had in his possession, of which the petitioner had every reason to be aware about, since it was the petitioner himself who had forwarded the extract to the Talati long after the entry was made by the Talati and after the same was certified by him. The decision of the Hon'ble Supreme Court in Zunjarrao Bhikaji Nagarkar Vs. Union of India and ors. (supra) would not help the petitioner since in the present case I find that the petitioner was not guilty of mere error of judgement or carelessness or inadvertence or omission. I find that the Collector was justified in awarding penalty since negligence on the part of the petitioner would be culpable negligence and he would therefore not be immuned from Departmental action.

21. In the result, I find that no interference is called for in the order of penalty imposed against the petitioner by which his four annual increments are ordered to be withheld without future effect. The petition is therefore rejected. Rule is discharged with

no order as to costs.

(Akil Kureshi, J.)
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